

2015

# REPORT TO THE LEGISLATURE

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## I. SUMMARY

The State Public Defense Commission (PDC) was recently established<sup>1</sup> as a means to improve the delivery of indigent legal defense services throughout Idaho. The mission of the Commission is to seek and preserve freedom for all by vigorously safeguarding Constitutional rights. In the words of Thomas Jefferson, “The price of freedom is eternal vigilance.” In that effort, the Commission aims to:

- (A) serve as a **clearing house of information** for relevant stakeholders;
- (B) maintain standards to ensure that defending attorneys have adequate **training and resources** to fulfill their Sixth Amendment obligations;
- (C) **promulgate rules** for public defender training and data collection regarding indigent defense services;
- (D) **inform the legislature** of any Sixth Amendment issues.

In a very short period, the Commission has established an office, held regular meetings, begun to assess the collection of relevant data, and identified its immediate priorities for its first year of operation. Consequently, the members of the Commission are engaged in developing recommended model contract terms and constructing rules and regulations regarding public defender training and qualifications.

### STATE PUBLIC DEFENSE COMMISSION

- GATHER INFORMATION
- PROVIDE TRAINING
- ISSUE RULES & STANDARDS
- INFORM LEGISLATURE

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<sup>1</sup> For a brief discussion of the relevant background leading to the creation of the State Public Defense Commission, *see* Supplemental Material at pp.13-15, included at the end of this report.

## II. APPOINTMENT OF MEMBERS

According to statute, all appointed members of the Commission are voluntary and serve part-time. The following Commissioners were appointed upon the creation of the Commission in July of 2014:

Member	Appointment Authority	Term
<b>Sen. Chuck Winder</b> Senate	President Pro Tempore of Senate	Elected Term ≤ 2 years
<b>Rep. Jason A. Monks</b> House of Representatives	Speaker of the House of Representatives	Elected Term ≤ 2 years
<b>Hon. Molly Huskey, Chair*</b> District Court Judge, Third District	Chief Justice of Supreme Court	2 years
<b>Comm. Kimber Ricks</b> Idaho Association of Counties	Governor	3 years
<b>William H. Wellman, Esq.</b> Owyhee County Public Defender	Governor	3 years
<b>Sara B. Thomas, Esq.</b> State Appellate Public Defender	Governor	3 years
<b>Darrell G. Bolz, Vice-Chair*</b> Idaho Juvenile Justice Commission	Governor	3 years

\* Both the Chair and Vice-Chair serve terms of a single year.

### III. ACCOMPLISHMENTS OF THE COMMISSION

The Commission met for the first time on August 27, 2014. Given the obvious challenges in creating a new agency and meeting its statutory obligations, the Commission has met a total of nine times in the intervening four and a half months. In that time the Commission has selected a chair and vice-chair for its first year of operation, drafted bylaws, and adopted a mission statement, vision statement and statement of values.

In accordance with statute, the Commission hired a full-time Executive Director, Ian Thomson, to handle the day-to-day operations of the Commission. He began working for the Commission in October. Prior to joining the Public Defense Commission, Mr. Thomson worked in the Capital Litigation Unit at the Idaho State Appellate Public Defender. Previously he worked as a trial-level public defender for several years. The Commission also obtained office space and hired a part-time administrative assistant. In establishing a new state agency, the Commission has contracted with other state agencies and private contractors to provide necessary services and support for the creation and maintenance of the office.

The Commission identified its statutory priorities and formed two primary **subcommittees**: one to explore **model contract terms** for use by the various counties, and the other to devise administrative rules regarding public defender **training and qualifications**. The entire membership of the Commission also agreed to work on data reporting requirements throughout the first year.

#### Hard at Work

- Establishing a new state agency from the ground-up
- Forming sub-committees
  - Model Contracts
  - Training & Qualifications
- Assessing public defense services in each county
- Assessing current public defender training and continuing legal education

## Public Defense Delivery Assessment

The Commission has made a complete assessment of the way in which each county in Idaho provides for indigent defense services. Accompanying that information, the Commission has generated a comprehensive public defender roster, consolidating contact information for every institutional public defender, contract defending attorney, and contracted conflict public defender across Idaho.



Cassia County Courthouse

By statute there are four approved means for providing Sixth Amendment counsel to those who qualify<sup>2</sup>: (1) a county can establish and maintain an institutional **public defender office**, (2) more than one county can **jointly establish** and operate an institutional public defender office, (3) a county can **contract with the public defender office** of another county for services,

or (4) a county can choose to **contract with private practitioners** to act as the defending attorneys for those who qualify.

The following is a brief synopsis of the methods of delivery being used in the various counties throughout Idaho.

### **INSTITUTIONAL PUBLIC DEFENDER OFFICES**

**Seven** (7) counties have now chosen to establish and maintain a public defender office. (Ada, Bannock, Bonner, Bonneville<sup>3</sup>, Canyon<sup>4</sup>, Kootenai, and Twin Falls counties.)

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<sup>2</sup> Idaho Code §19-859(1)-(4).

<sup>3</sup> Bonneville County also created a separate Office of the Conflict Public Defender in 2014, which employs two full-time attorneys to handle cases conflicted out of the primary office.

<sup>4</sup> The Canyon County Public Defender was only established in 2014, and began operation on October 1<sup>st</sup>.

Those offices currently employ a combined total of 115 full-time attorneys to handle the majority of the indigent cases in their respective counties. Between those offices, the PDC has identified another forty-one (41) attorneys that are used to handle conflict cases.

#### **JOINTLY OPERATED PUBLIC DEFENDER OFFICES**

Only **two** (2) counties have opted to enter into a joint operating agreement, in order to pool resources together and establish an office of the public defender. (Cassia and Minidoka counties.) A joint management board, with members from each county, has been arranged to handle the finance and maintenance of the office.

The Mini-Cassia Public Defender currently employs five (5) full-time public defenders and operates a small office in each respective county.

#### **COUNTIES CONTRACTING WITH OUTSIDE PUBLIC DEFENDER OFFICES**

No county in Idaho is currently contracting with an outside institutional public defender office to provide Sixth Amendment representation.

#### **COUNTIES WITH PRIVATE ATTORNEY CONTRACTS**

**Thirty-four** (34) counties are currently under contract with one or more attorneys in private practice to provide representation for those who qualify. (Adams, Bear Lake, Benewah, Bingham, Blaine, Boise, Boundary, Butte, Camas, Caribou, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Latah, Lemhi, Lewis, Lincoln, Madison, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, and Valley counties.)

Between those thirty-four (34) counties, there are fifty-three (53) separate contracts involving sixty-seven (67) different attorneys who are engaged in providing services. The Commission has also identified an additional six (6) attorneys that have conflict-specific contracts in those counties, and another two (2) who frequently serve as a conflict attorney without the benefit of a contract.

There is **one** county (Washington) that has neither a public defender office nor an existing contract for the provision of indigent defense services. The Commission has identified seven (7) attorneys who are most frequently appointed by the sitting judge to handle those cases on an ad hoc basis.

Type of Service	Number of Counties	Number of Attorneys
County Institutional Public Defender Office	7	115
Jointly Operated Public Defender Office	2	5
Contract Defending Attorney	34	67
Contract Conflict Defending Attorney <sup>5</sup>	10	47

Felony and capital appeals in forty-three (43) counties are handled by the office of the State Appellate Public Defender.<sup>6</sup> The State Appellate Public Defender currently employs a staff of sixteen (16) attorneys, and uses the services of three (3) private appellate lawyers to handle felony conflicts. According to the Commission's most recent assessment, there are 136 full-time attorneys employed at institutional public defender offices at the trial and appellate level in Idaho. Another sixty-seven (67) work under a contract with one or more counties, and another fifty-nine (59) serve as either contract conflict-defense attorneys or are frequently used as appointed attorneys to handle similar matters.

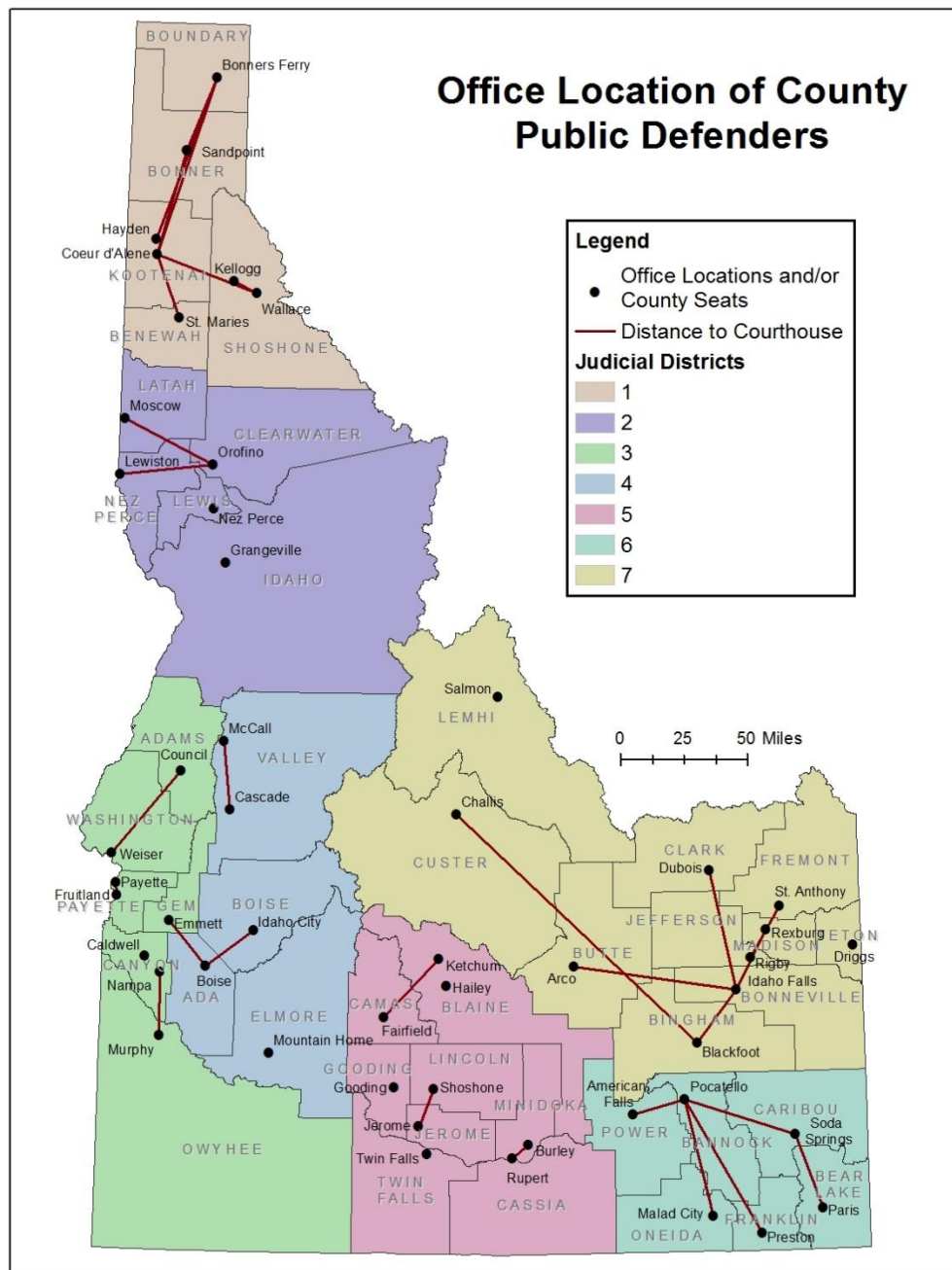
The Commission has also discovered that half of Idaho's counties (twenty-two) are being served by contract defending attorneys whose principal office is located outside of the county. (See figure below.)

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<sup>5</sup> Six counties with institutional public defender offices, along with four contract counties, have entered into specific contracts for conflict services.

<sup>6</sup> All counties, except for Jefferson County, have chosen to participate and contribute to the state funds which qualifies them for these services.





## Legal Education and Training Assessment

The Commission has undertaken a concerted effort to identify those attorneys who are in the greatest need of additional training, support, and resources. In anticipation of planning training programs for public defenders, the

Commission has completed an initial assessment of the amount and source of the mandatory continuing legal education (MCLE) credit hours obtained by each public defender in their current reporting period. That initial assessment confirms that a significant number of indigent defense attorneys in the State are not receiving adequate training hours in areas directly relevant to the representation of their indigent clients.

The Commission has joined 186 attorneys serving as public defenders in Idaho to the National Association for Public Defense (NAPD), which provides attorneys with significant online resources. Particularly for attorneys who practice alone, or are located in more remote areas, online resources can provide a substantial and cost-effective method to provide guidance and support.

## IV. IDENTIFIED PRIORITIES OF THE PUBLIC DEFENSE REFORM INTERIM COMMITTEE

During its first few months of operation, the Commission was tasked with certain clear priorities by the joint Public Defense Reform Interim Committee. Those objectives included the development of model contract terms to serve as guidelines to the counties with private contracts, and the provision of relevant training to public defenders in the current fiscal year.

The Commission has adopted the priorities of the Interim Committee, and due to limited time and resources the State Public Defense Commission is not submitting any legislative recommendations for public defense reform at this time. The Commission feels strongly that significant reforms in the absence of clear and reliable data and information would be a disservice to all of those involved. The Commission will be looking toward the implementation of Odyssey (the statewide court technology software) to provide better information on caseload and workload of those attorneys representing defendants at county expense. That program represents a \$21 million investment by the State into improving effective case management throughout the criminal justice system. However, as Administrative

District Judge Richard Bevan recently reported to the House Judiciary, Rules & Administration Committee, the statewide implementation of Odyssey is not likely to be completed until 2017.

### Model Contract Terms and Public Defender Standards

The Commission has undertaken a serious study of the nature and composition of contracts being used by counties throughout Idaho. They have begun their review of other model contracts, and are progressing quickly in identifying those terms that are necessary to ensure that counties can provide representation with financial or ethical conflicts, and still take into consideration the particular circumstances of the individual counties. At the same time these contract provisions should provide the attorney with adequate protections and financial compensation for the work being provided to their clients.

The Commission expects to present recommended model contract terms in the upcoming year and to have those available to the counties by the time existing contracts expire in the fall of 2015. In addition, the Commission will be submitting proposed rules for adoption and approval regarding the qualifications of contracted public defenders and training requirements for those attorneys handling indigent appointments.

### Full Utilization of Trustee and Benefit Payments

The Commission is fully aware that its trustee benefit payment allocation has been set-aside specifically for the training of indigent defense attorneys across the state. In addition to providing attorneys with online resources through the NAPD, the Commission is planning to host and sponsor three distinct training conferences before the end of the 2015 fiscal year, at little or no cost to those who attend. A primary conference for trial- and appellate-level public defenders is scheduled for June 4-5 in Caldwell, which will accommodate up to 155 attorneys. An additional capital training will be held in Coeur d'Alene on June 12<sup>th</sup> for up to

twenty-five (25) attorneys. Furthermore, a specialized training for attorneys who handle juvenile and child-protection cases is planned in Boise on May 29<sup>th</sup> for another twenty (20) attorneys. Those trainings are expected to fully exhaust the money allocated for trustee benefit payments in the current year.

## Outreach and Education

Finally, the Commission is engaged in important information gathering and public education with respect to the public defense function. In accordance with those aims, representatives of the Commission have already made considerable efforts to meet with chiefs of the institutional public defender offices across the state, several contract attorneys, county commissioners, and a limited number of prosecuting attorneys. The Commission will continue to strive to inform the relevant stakeholders about the Commission's role, the guidance it can provide to county commissions, and the support it can offer to defense attorneys representing Idaho's indigent population.

## V. CONCLUSION

The State Public Defense Commission is determined and committed to improving the quality and effectiveness of indigent representation in every county of Idaho. The Commission also acknowledges that there is clear room for reform and improvement. Although an assessment has begun, given the diversity of the current public defense system and the diffuse nature of its administration, the challenges faced in collecting data from each county, and the difficulty in implementing model contract terms, a more robust analysis of each county's system will take a considerable amount of time. Consequently, the Commission believes that it will require additional time and study before making legislative recommendations involving substantive and systemic reform.

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# SUPPLEMENTAL MATERIALS

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## HISTORY AND BACKGROUND OF THE IDAHO STATE PUBLIC DEFENSE COMMISSION

In 2008 the Idaho Criminal Justice Commission (CJC), along with the Juvenile Justice Commission, requested the National Legal Aid and Defender Association (NLADA) conduct a comprehensive analysis and evaluation of the provision of indigent defense across the state of Idaho at the trial-level. Over the course of a year, the NLADA sent evaluators to seven representative counties throughout the state, including Ada, Blaine, Bonneville, Canyon, Kootenai, Nez Perce, and Power.

The NLADA issued their final report in January 2010, entitled, *The Guarantee of Counsel: Advocacy & Due Process in Idaho's Trial Court (Evaluation of Trial-Level Indigent Defense Systems in Idaho)*. The report concluded

[T]he state of Idaho fails to provide the level of representation required by our Constitution for those who cannot afford counsel in its criminal and juvenile courts. By delegating to each county the responsibility to provide counsel at the trial level without any state funding or oversight, Idaho has sewn a patchwork quilt of underfunded, inconsistent systems that vary greatly in defining who qualifies for services and in the level of competency of the services rendered. While there are admirable qualities of some of the county indigent defense services, NLADA finds that none of the public defender systems in the sample counties are constitutionally adequate.

At the same time the NLADA was conducting their analysis of Idaho's system, the CJC created its own Subcommittee on Public Defense in December of 2009. The CJC's subcommittee included representatives from the Idaho Association of Counties, the state court system, the Attorney General's office, county prosecutors, judges and magistrates, legislators, attorneys, public defenders, and the Department of Corrections. That group undertook its own study of the public defense system over the course of three and a half years.

The CJC's subcommittee made several legislative recommendations, including (1) a revision of state statute addressing the definition of indigency, and clarifying when a person or child qualifies for legal representation at county expense, (2) a clarification of when a single attorney can serve as a guardian and attorney in the same matter, (3) the establishment of standards for juvenile representation, and (4) the creation of a legislative Interim Committee to explore public defense reform. Largely in response to those recommendations, the joint legislative Public Defense Reform Interim Committee was created in the 2013 session and was extended through 2014.

## ESTABLISHMENT OF THE STATE PUBLIC DEFENSE COMMISSION

During the 2014 session the Legislature established the State Public Defense Commission, as a self-governing agency of the Executive branch. The Commission's charter is codified in Idaho Code §19-848 through §19-850. The Commission was established on July 1<sup>st</sup>, 2014.

The statutory mandate and authority of the PDC was clearly set forth in I.C. §19-850(a) and (b). The PDC has been charged with the following:

- (1) Promulgate rules with regards to

- a. Training and continuing legal education requirements (CLE) for indigent defense attorneys, including criminal, capital, post-conviction, juvenile, abuse and neglect, civil commitments, and civil contempt;
  - b. Uniform data reporting requirements for the annual reports that indigent defense attorneys must submit to their county commissions and administrative judge, including caseload, workload and expenditures.
- (2) Make recommendations to the Idaho legislature regarding the public defense system (by January 20 of each year), including
- a. Core contract requirements for counties to use when engaging services of private attorneys (including model contracts);
  - b. Qualifications and experience standards for indigent defense attorneys;
  - c. Enforcement mechanisms;
  - d. Funding issues, including for trainings, data collection and reporting, and handling conflict cases.

The Legislature approved an initial annual budget of \$300,000. Of that \$119,900 was appropriated for personnel costs, \$74,200 was dedicated to general operating expenses, and \$105,900 was dedicated as trustee benefit payments for public defender training costs.